

**City of Wichita  
City Council Meeting  
May 14, 2019**

**TO:** Mayor and City Council

**SUBJECT:** Amendment to WaterWalk Ground Lease No. 1

**INITIATED BY:** City Manager's Office

**AGENDA:** New Business

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**Recommendation:** Approve the amendment to WaterWalk Ground Lease No. 1 with King of Freight, LLC, to form the Amended and Restated Waterwalk Ground Leases 1-A and 1-B.

**Background:** In September 2002, the City of Wichita entered into a development agreement with WaterWalk LLC to redevelop the East Bank Redevelopment District, located north of Kellogg, west of Main, south of Waterman and east of the Arkansas River in downtown Wichita. The WaterWalk Development Agreement was later amended in December 2003, October 2004, June 2006 and December 2008 to reflect changes to the scope, terms, and conditions of the redevelopment project.

WaterWalk Ground Lease No. 1, encompassing approximately 2.85 acres, was entered into on December 21, 2004, with a 99-year term as part of the redevelopment project.

King of Freight, LLC (KOF) has signed a purchase and sale agreement to acquire the leasehold premises and buildings formerly occupied by Gander Mountain to use as its primary headquarters. KOF currently has approximately 535 employees officing in Wichita, and is in a phase of rapid expansion. KOF plans to redesign the Gander Mountain space, and there is also vacant space on the parcel for an additional satellite building should one be desired to accommodate more employees.

**Analysis:** The amendment would permit a non-retail user, King of Freight, to renovate and occupy the former Gander Mountain building. In return, King of Freight agrees to create at least 400 net new Wichita employees at an average salary of \$50,000. King of Freight must create the new jobs within the first five years and must maintain the 400 jobs for a minimum of 10 years. The lease's current rent requirement, which was drafted for a retail use, would be suspended if the job requirement is met, and would terminate in 10 years if KOF and its entities maintains the presence of 400 net new jobs in Wichita through the 10-year period.

This agenda item includes a division of the land parcel into two parcels and would divide the Original Ground Lease #1 into two leases, the Amended and Restated WaterWalk Ground Leases 1-A and 1-B.

**Financial Considerations:** There is no financial cost to the City. WSU's Center for Economic Development and Business Research (EDBR) benefit analysis estimates that the 400 net new jobs would have a direct tax generation of nearly \$1,000,000 over the course of 10 years. KOF has also agreed to pay for parking spaces at an initial rate of \$15/month per space. Revenue from KOF's employee parking is estimated at approximately \$70,000/year.

**Legal Considerations:** The Law Department has reviewed and approved this amendment as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the amendment to WaterWalk Ground Lease No. 1 with King of Freight, LLC, to form the Amended and Restated Waterwalk Ground Leases 1-A and 1-B.

**AMENDED AND RESTATED  
WATERWALK GROUND LEASE NO. 1-A**

THIS AMENDED AND RESTATED GROUND LEASE NO. 1-A, is made and entered into at Wichita, Kansas, as of the \_\_\_\_ day of May, 2019.

BY AND BETWEEN

City of Wichita, Kansas,  
a Kansas municipality,

“Landlord”

AND

WaterWalk LLC,  
a Kansas limited liability company,

“Tenant”

WITNESSETH: That;

WHEREAS, Landlord is the owner of the Premises described herein;

WHEREAS, Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord on the terms and conditions set forth in this Lease;

WHEREAS, Landlord and Tenant have heretofore entered into that certain Development Agreement dated September 10, 2002, amended on December 2, 2003, October 12, 2004, June 20, 2006, December 16, 2008, and in August 2012 (as amended, collectively, the “Development Agreement”);

WHEREAS, Landlord and Tenant have heretofore entered into that certain WaterWalk Ground Lease No. I dated December 21, 2004 (the “Original Ground Lease”), pursuant to which Tenant leases from Landlord the land described on Exhibit A (the “Original Ground Lease Land”);

WHEREAS, since the execution of the Original Ground Lease, Tenant has contemplated the development and use of the land described on Exhibit B (the “Premises”) separate from the development and use of the land described on Exhibit C (the “North Development Parcel”) (the Premises and the North Development Parcel together constitute all of the Original Ground Lease Land);

WHEREAS, to facilitate the development and use of the Premises separate from the development and use of the North Development Parcel, Landlord and Tenant desire to amend and restate the Original Ground Lease in its entirety, in order to separate the Original Ground Lease into two distinct Amended and Restated Ground Leases, such that Tenant leases the Premises pursuant to one Amended and Restated Ground Lease and the North Development Parcel pursuant to a separate Amended and Restated Ground Lease; and

WHEREAS, Landlord and Tenant desire to enter into this Lease with respect to the Premises and simultaneously enter into that certain Amended and Restated WaterWalk Ground Lease No. 1-B (“Ground Lease 1-B”) with respect to the North Development Parcel.

NOW, THEREFORE, in consideration of the Premises and the mutual covenants contained herein, the parties agree as follows:

## ARTICLE I

### Basic Terms and Definitions

The following basic terms and definitions shall be applicable to the various provisions of this Lease:

Minimum Rent. The Minimum Rent is set forth in Section 5.01 below.

Notices. The addresses for any notices required or permitted hereunder shall be as follows:

a. If to Landlord: c/o City Clerk  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

With a copy to: City Attorney  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

b. If to Tenant: WaterWalk LLC  
2121 N. Webb Road  
Wichita, Kansas 67206

With a copy to: Harvey R. Sorensen  
Foulston Siefkin LLP  
1551 N Waterfront Pkwy, Ste 100  
Wichita, Kansas 67206

or such other location as the parties may from time to time direct in writing.

Premises. The land described on Exhibit B attached hereto and incorporated herein by reference.

Term. The Term of the Lease shall be ninety-nine (99) years, commencing on the Commencement Date and expiring on the Expiration Date, unless earlier terminated pursuant to the terms hereof.

## ARTICLE II

### Granting Clause

Section 2.01. Demise. In consideration of the obligation of Tenant to pay all forms of rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Premises for the Term, all upon the terms and conditions set forth in this Lease; provided, however, that no existing building nor any building which is constructed or placed upon the Property, either temporarily or permanently, shall be used for the purpose of housing the operation of any multi-game, casino-style gambling in the Premises.

## ARTICLE III

### Construction of Improvements

Section 3.01. *[Intentionally Deleted]*

Section 3.02. Possession of Premises. Landlord represents and warrants that Tenant's possession of the Premises shall be free of any claim of possessory rights by any person or entity except that of Landlord, Tenant or as created by any Approved Title Exception (defined below). Landlord shall have the right to access the property to maintain the adjacent public improvements after due notice to the Tenant, provided such maintenance shall not interfere with the conduct of Tenant's business and provided that Landlord shall be solely responsible for all costs and expenses and shall fully restore Tenant's premises.

Section 3.03. Tenant's Construction. Tenant has constructed one or more buildings and related improvements on the Premises, including, but not limited to, a destination retail facility as generally set forth in the Development Agreement, as amended ("Tenant Improvements"). Tenant shall not construct on the Premises (i) any structures that are utilized as a "fast food" restaurant that includes a "drive-through" window, (ii) car lots for the sale and/or storage of new or used automobiles, (iii) massage parlors, (iv) escort services, or (v) adult cinema, film, video, or toy stores. Any such construction shall be at Tenant's sole cost and expense, and shall be in accordance with all applicable laws, ordinances, and regulations, including, without limitation, the terms and conditions of the zoning requirements except as noted in the Development Agreement, as amended. Tenant shall have the right to demolish, rebuild, remodel, or alter such improvements at any time during the term of this Lease in Tenant's sole discretion, or to build additional improvements on the Premises, as long as such activities are carried out in compliance with all applicable laws, ordinances, and regulations. Until this Lease shall terminate as provided herein, Tenant shall own in fee simple all such improvements so constructed by Tenant and shall be entitled to all benefits of such ownership, including, without limitation, depreciation

under applicable tax laws. Upon termination of this Lease for any reason, fee simple title to all such permanent improvements and fixtures, but not to trade fixtures and personal property, shall immediately vest in Landlord, and Tenant shall execute such deeds or other instruments reasonably required by Landlord to evidence such ownership of record.

## ARTICLE IV

### Term

Section 4.01. Commencement Date. The Term of this Lease commenced on December 21, 2004 (the "Commencement Date").

Section 4.02. Short Form Lease. Upon request of either party, the other shall execute (a) a document in recordable form setting forth the exact Commencement Date of the Term hereof and/or (b) a short form lease or memorandum of lease in proper form for recording, setting forth the Commencement Date and the basic provisions of this Lease, except for the rental payable hereunder or other similar proprietary matters.

Section 4.03. Expiration Date. Unless earlier terminated pursuant to the terms hereof, this Lease shall expire at the end of the Term, including all renewals thereof, as defined in Article I above (the "Expiration Date").

Section 4.04. Holding Over. In the event Tenant remains in possession of the Premises after the Expiration Date, and Landlord elects to accept rental payments, Tenant shall be deemed to be a tenant from month to month.

## ARTICLE V

### Rent

Section 5.01. Minimum Rent. As of the date first written above, Tenant has paid Landlord a minimum fixed annual rent ("Minimum Rent") of One Dollar (\$1) in one (1) installment covering the Term of this Lease as defined in Article I above.

Section 5.02. Additional Rent. The Tenant will also pay, without notice, and without abatement, deduction, or setoff, except as otherwise specifically allowed herein, as additional rent, all sums, taxes, assessments, costs, expenses, and other payments which the Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any nonpayment thereof, the Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided herein or by law in the case of nonpayment of rent.

For all uses of the Premises that would be categorized under the 2017 North American Industry Classification System (2017 NAICS) under codes 4400 through 454390 ("Retail Uses"), as Additional Annual Rent Tenant shall pay a sum equal to twenty-five percent (25%) of the

Adjusted Net Cash Flow commencing with the first day the Tenant Improvements open for business ("Additional Retail Rent"). The Tenant shall calculate Adjusted Net Cash Flow for each Current Year within forty-five (45) days after the end of the Current Year (or portion thereof) and provide that calculation, and pay to the Landlord the Additional Retail Rent, within sixty (60) days after the end of the Current Year. Adjusted Net Cash Flow is Gross Revenues less Total Expenses, less the total amount of capital expenses for furniture, fixtures, and equipment for the Tenant Improvements in excess of the aggregate amount expended from any reserve during such year. No Additional Retail Rent and no Additional Rent involving any payment of any portion of the Adjusted Net Cash Flow shall be owed for any use of the Premises that is not a Retail Use under codes 4400 through 454390 of the 2017 NAICS. Furthermore, upon the assignment of this Lease by Tenant to Alwaysholdin LLC or some other entity controlled by or affiliated with King of Freight LLC (a "King of Freight Entity"), the following provisions governing Additional Retail Rent shall apply:

- If, within the first five (5) years following the assignment of this Lease to a King of Freight Entity, King of Freight LLC, including all entities which have merged with or been acquired by King of Freight LLC, creates 400 net new jobs, from a base employment level of 535 with an average wage of at least \$50,000.00 per year for employees whose main offices are contained within the corporate limits of the City of Wichita, Kansas, and further maintains the presence of said 400 net new jobs within the corporate limits of the City of Wichita for the following five (5) year period, after the conclusion of this ten (10) year period (the "King of Freight Additional Retail Rent Period") the Additional Retail Rent requirement shall be deleted from this Lease. Following the deletion of the Additional Retail Rent requirement from this Lease, no Additional Retail Rent and no Additional Rent involving any payment of any portion of the Adjusted Net Cash Flow shall be owed for any use of the Premises. If King of Freight LLC acquires or merges with any existing company that is already within the corporate limits of the City of Wichita, none of the jobs from the existing company or companies are not considered "net new jobs" to the City and will not be counted as part of the 400 net new job requirement.
- After King of Freight LLC and all entities which have merged with or been acquired by King of Freight LLC has created the 400 net new jobs with an average wage of at least \$50,000.00 per year for employees whose main offices are contained within the corporate limits of the City of Wichita, Kansas within the first five (5) years following the assignment of this Lease to a King of Freight Entity, the King of Freight Entity which is the current Tenant under this Lease may assign this Lease or sublease the Premises to either a retail user or new Tenant or a nonretail user or new Tenant and such user or new Tenant shall not be responsible for the payment of any Additional Retail Rent or Additional Rent involving any payment of any portion of the Adjusted Net Cash Flow **SO LONG AS** King of Freight LLC and its entities maintains the presence of said 400 net new jobs within the corporate limits of the City of Wichita during and until the conclusion of the King of Freight Additional Retail Rent Period. Under this procedure, any user of the Premises for any purpose that is otherwise allowed under the Lease and the Development Agreement is permitted and does not require the payment of any Additional Retail Rent even if the user or new Tenant is utilizing the Premises for a retail purpose. Furthermore, following this Lease's assignment to such user or new Tenant by

the King of Freight Entity, so long as King of Freight LLC and its entities maintains the 400 net new jobs discussed herein within the Wichita City Limits through the conclusion of the original King of Freight Additional Retail Rent Period, the Additional Retail Rent requirement shall be deleted from this Lease and no Additional Retail Rent and no Additional Rent involving any payment of any portion of the Adjusted Net Cash Flow shall be owed for any use of the Premises regardless of whether a King of Freight Entity remains the Tenant under this Lease. Nevertheless, should King of Freight LLC and its entities fail to maintain the 400 net new jobs discussed herein within the Wichita City Limits through the conclusion of the King of Freight Additional Retail Rent Period, the Additional Retail Rent requirement shall remain in full force and effect under this Lease and the current user/Tenant of the Premises shall be responsible for the payment of Additional Retail Rent from the date that King of Freight has failed to maintain the 400 net new jobs discussed herein.

- Creating and maintaining the 400 net new jobs discussed herein shall be defined as King of Freight LLC and all entities which have merged with or been acquired by King of Freight LLC creating and maintaining 400 net new jobs held by employees of King of Freight and its entities with an average wage of at least \$50,000.00 per year for employees whose main offices are contained within the corporate limits of the City of Wichita, Kansas. As is customary with economic development incentives, the benchmark to be utilized is the creation of 400 net new positions of employment that did not exist within the King of Freight operation as of the date when this Lease is assigned to a King of Freight Entity where employees receive an average wage of at least \$50,000.00 per year, and not the retention of a specific employee who was initially hired for each of these positions.
- Pursuant to the terms of this Lease, the King of Freight Additional Retail Rent Period shall begin on the date when this Lease is assigned to a King of Freight Entity and shall conclude ten (10) years following that date regardless of which entity is the current Tenant under this Lease and which entity is currently using the Premises.

Tenant agrees to allow representatives of the City of Wichita, Kansas ("City Representative"), after submission of the calculations of Additional Retail Rent for any year, to review and audit the books and records of the current entity using the Premises for compliance with the obligations to pay Additional Retail Rent hereunder if the Premises is being used for a Retail Use as defined herein. If an audit by the City reveals a material understatement of the amount due the City, then Tenant shall pay all reasonable costs of such audit by an independent certified public accountant of reputable standing. In making the calculations required hereunder, Tenant and City shall apply generally accepted accounting principles, consistently applied. If the Premises is being used by an entity who is not the Tenant hereunder (such as in the case of a sublease), Tenant shall require as a condition of that sublease that any sublessee who uses the Premises for a Retail Use shall make its books and records available to City Representative for the purposes of the review discussed by this paragraph.

For the purposes of verifying its compliance with the requirements for creation and retention of 400 net new jobs within the King of Freight Additional Retail Rent Period described above, King of Freight LLC and all entities which have merged with or been acquired by King of Freight LLC shall certify to the City of Wichita at the time this Lease is assigned to a King of

Freight Entity the number of jobs for employees whose main offices are contained within the corporate limits of the City of Wichita, Kansas that are currently provided by King of Freight LLC and its entities as of the date that this Lease was first assigned to a King of Freight Entity. Annually on the anniversary of the assignment of this Lease to a King of Freight Entity, King of Freight LLC shall make a certification as to the number of net new jobs created for employees whose main offices are contained within the corporate limits of the City of Wichita by King of Freight LLC and its entities, Kansas and the average wage of the workers in these new positions. At any time upon the request of the City of Wichita, King of Freight LLC and all entities which have merged with or been acquired by King of Freight LLC shall make available to City Representative the wage records for each new employee position created within the Wichita City Limits, subject to redaction of individually identifiable employee information. King of Freight LLC shall also be entitled to make such certifications as to the number of net new jobs on a more frequent than annual basis if desired by King of Freight LLC.

Section 5.03. Place of Payment. Minimum Rent, and all additional rent and other charges owed by Tenant to Landlord under the Lease, shall be payable by Tenant to Landlord at Landlord's Notice Address set forth in Article I above or to any other place designated by written notice delivered by Landlord to Tenant at least ten (10) days prior to the date such amount is due to Landlord.

## ARTICLE VI

### Property Taxes

Section 6.01. Taxes. Tenant shall pay as additional rent during the Term and any extensions thereof, all ad valorem taxes, and all other governmental taxes or charges that may be levied against the Premises. If not billed directly to Tenant, Landlord shall, after receipt of any tax bill or other notice of tax or special assessments due on such improvements, promptly furnish Tenant with a copy thereof. Tenant shall issue its check payable to the applicable taxing authority in the amount indicated and shall mail such check to the applicable taxing authority. If Landlord receives receipts from the taxing authority evidencing the payment thereof, Landlord will promptly mail copies of such receipts to Tenant. Taxes for the first and last years hereof shall be prorated. All personal property taxes shall be the responsibility of Tenant. Landlord shall not pass through to the Tenant or the Premises any cost for design and construction of the Public Improvements.

Tenant shall pay any property taxes that may be levied against the Parking Garage should there be a change in the tax-exempt status of that structure as a result of this agreement.

Section 6.02. Payment by Landlord. If Tenant should fail to pay any taxes, assessments, governmental charges or fees required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects, pay such taxes, assessments and governmental charges. Any sums so paid by Landlord shall be deemed to be additional rent owing by Tenant to Landlord and shall be due and payable upon demand as additional rent. Landlord may only step in and pay such taxes or charges on Tenant's behalf after Landlord has provided Tenant with written notice thereof and a reasonable time to pay such amounts.

Provided, however, that if Tenant timely protests the imposition of any taxes and diligently pursues the contest of any such assessment, then Landlord shall forebear any such payment until the protest is resolved or the taxing authority seeks to foreclose any tax lien.

## ARTICLE VII

### Condition of Premises, Mechanic's Liens, Liability Insurance

Section 7.01. Representations or Warranties. The Landlord warrants and represents to, and agrees with, the other Party as follows:

- a. It is a municipality and political subdivision of the State of Kansas, duly incorporated and validly existing under the laws of the State of Kansas.
- b. It has full power and authority to execute this Agreement and consummate the transactions contemplated hereby.
- c. Neither the execution and delivery of this Agreement and the other documents contemplated herein will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.
- d. To the best of Landlord's knowledge, other than ground water pollution, there are no "Hazardous Materials" (such term shall include, without limitation, substances which are flammable, explosive, corrosive, radioactive, toxic, petroleum and petroleum products and any substances defined as hazardous substances, hazardous materials, toxic substances, or hazardous wastes in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any similar state laws, all amendments to these laws and regulations adopted or publications promulgated pursuant to these laws) presently located in, on, or under the premises including, without limitation, the subsurface soils and groundwater, have migrated to the premises from another source, have been installed, used, generated, manufactured, stored, released, or disposed of on, under, or about the premises by Landlord or any third -person, nor has Landlord received any notice or communication regarding any alleged Hazardous Materials on or about the premises and that the premises is in compliance with all federal, state, and local laws, ordinances, rules and regulations relating to any such Hazardous Materials. In the event any Hazardous Materials are found on the premises during the term or any extension of the term hereof, Landlord shall bear all costs for the removal and remediation of the Hazardous Materials and shall restore the premises to substantially the same

condition as it was in immediately prior to such removal and remediation work. Landlord shall immediately notify Tenant in writing of any notice, complaint, warning, claim, report, or communication received by Landlord from any federal, state, or local governmental or regulatory agency regarding Hazardous Materials on the premises and provide Tenant with a copy of the same within ten (10) days of Landlord's receipt thereof. This does not waive the limitation under the Kansas Tort Claims Act.

- e. The Premises is within the boundaries and is subject to the provisions of the Development Agreement Regarding Development of the East Bank between the City of Wichita, Kansas and Riverwalk, LLC dated September 10, 2002, as it has been amended by its First Amendment dated December 2, 2003, its Second Amendment dated October 12, 2004, its Third Amendment dated June 20, 2006, its Fourth Amendment dated December 16, 2008, revisions to the Master Plan of the Agreement that were approved on September 1, 2009 and September 14, 2010, and its Fifth Amendment that was executed and approved in August 2012 (collectively the "Development Agreement"). No payments for any Public Improvements or any other payments are owed by Tenant to the City of Wichita underneath the Development Agreement and no payments shall be incurred or become owed by Tenant under the Development Agreement without Tenant's written consent.

Landlord agrees to indemnify and hold Tenant harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments imposed against Tenant, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, including reasonable attorneys' fees, to the extent the same arise out of, or in connection with, any Hazardous Materials currently located in, on or under the premises. Tenant agrees to indemnify and hold Landlord harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments against Landlord, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, to the extent the same arise out of, or in connection with, any Hazardous Materials which are hereafter released in, on or under the premises by Tenant or any subtenant thereof.

Section 7.02. Mechanics' Liens. If any mechanic's or materialman's lien is filed against the Premises as a result of any work or act of Tenant, Tenant shall discharge the lien within forty (40) days after the filing of the lien, provided, however, that for so long as Tenant posts a bond and continues to diligently contest the amounts claimed due, it shall not be obligated to discharge said lien.

Section 7.03. Insurance Covering Tenant's Work. Tenant shall not make any improvements, alterations, repairs or installations, or perform any other work to the Premises unless prior to the commencement of the work Tenant shall obtain or cause its contractors to obtain (and during the performance of the work keep in force) public liability and worker's compensation insurance to cover every contractor to be employed. The policies shall be non-cancelable without ten (10) days' prior written notice to Landlord, and such insurance shall be carried with companies reasonably satisfactory to Landlord. Prior to the commencement of the

work, Tenant shall deliver duplicate originals or certificates of the insurance policies to Landlord.

## ARTICLE VIII

### Repairs, Compliance, Surrender

Section 8.01. Repairs and Maintenance by Tenant. Tenant shall make all repairs to the Premises which Tenant concludes are necessary or desirable to keep the Premises in good order and repair.

Section 8.02. Compliance with Laws. Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises, and otherwise comply with all applicable laws, ordinances and governmental regulations, and recorded restrictions and covenants. During the Term Landlord may not permit any additional restrictions, covenants or any other encumbrances to be placed on any portion of the Premises without Tenant's prior written consent, which consent may be granted or withheld by Tenant in Tenant's sole discretion. Tenant shall have no responsibility for the failure of any Sub-Tenant to comply with the provisions of this Section.

Section 8.03. Surrender of Premises. Upon the expiration of this Lease, Tenant shall quit and surrender the Premises together with all alterations, fixtures, installations, additions and improvements which may have been made in or attached on or to the Premises. Upon surrender, Tenant may remove its personal property and trade fixtures.

## ARTICLE IX

### Services, Utilities, Access

Section 9.01. Utilities. Tenant covenants and agrees to pay for all utility deposits as well as all utility charges, including but not limited to natural gas, electricity, water, trash, and garbage removal and sewer in a timely manner as they may come due during the Term thereof.

Section 9.02. Access. Landlord agrees to maintain access from the Premises to Main Street and Waterman Street during the term of the Lease; provided, this provision shall not impair Landlord's ability to temporarily close access for street repairs, maintenance, utilities and similar items, nor impair its ability to grant parade permits or otherwise allow public assemblage and use of the public street.

Section 9.03. Parking. The parties agree that Tenant's employees will have non-exclusive access to the 430-space Parking Garage and the 60 spaces of surface parking under U.S. 400 ("Kellogg") for an initial rate of \$15/month per employee for parking between the hours of 8:00 a.m. – 6:00 p.m., Mondays-Fridays. Tenant shall be responsible for providing a monthly report of the number of employees who are parking in Parking Garage and on surface

parking lot under Kellogg, and shall remit \$15.00 per employee on a monthly basis. At each one-year anniversary of this agreement, the parking rate shall increase 3%.

## ARTICLE X

### Mortgage on Tenant's Interest

Section 10.01. Right to Encumber. Landlord hereby grants to Tenant the right to mortgage, grant a security interest in, and otherwise encumber, Tenant's interest under this Lease, and Tenant's right, title and interest in and to the improvements constructed by Tenant on the Premises (hereinafter a "Leasehold Mortgage") without obtaining Landlord's consent.

Section 10.02. Cure by Mortgagee. Landlord shall give to any mortgagee who has notified Landlord of its Leasehold Mortgage, simultaneously with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant and no such notice to Tenant shall be effective unless a copy is so served upon said mortgagee. Such mortgagee shall have the right, but not the obligation, to cure any default by Tenant hereunder, by completing such cure at any time within sixty (60) days following the expiration of the cure period otherwise applicable to Tenant, or, if said default is of a nature that it may not reasonably be cured within the applicable cure period, then if mortgagee commences to cure during the applicable cure period and proceeds with such cure diligently and with reasonable dispatch, and Landlord shall accept performance by or at the instance of such mortgagee as if the same had been made by Tenant.

Section 10.03. Foreclosure of Leasehold Mortgage. The mortgagee under a Leasehold Mortgage may become the legal owner and holder of the interest of Tenant under this Lease, including, without limitation, the interest of Tenant in all improvements erected by Tenant on the Leased Premises, by foreclosure or by an assignment of this Lease in lieu of foreclosure, without Landlord's consent. In such event, such mortgagee shall have the right thereafter to assign this Lease without the consent of Landlord, but otherwise subject to the terms and provisions of this Lease.

Section 10.04. Non-Disturbance Agreement. In the event of any termination of this Lease due to a Tenant default prior to the expiration of the Term, Landlord shall provide any mortgagee with written notice of the termination together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. Said mortgagee shall then have an option to obtain a new lease upon the same terms and conditions set forth in this Lease. This option must be exercised by written notice to Landlord given within 30 days from the date said mortgagee receives the Landlord's notice and statement. The new lease shall require said mortgagee to cure all monetary defaults of Tenant under this Lease. Any non-monetary default of Tenant shall be waived by Landlord, providing mortgagee proceeds with reasonable promptness to obtain possession, continues diligently to attempt to cure the default, pays the Minimum Rent, and satisfies Tenant's other obligations under this Lease.

## ARTICLE XI

### Destruction and Insurance

Section 11.01. Insurance. Tenant agrees, at Tenant's cost and expense, to obtain and keep in force and effect during the life of this Lease and any extensions thereof, in the names of Landlord and Tenant, general liability insurance against any and all claims for personal injury or property damage occurring in or upon the Premises during the term of this Lease. Such insurance shall be maintained with limits of liability of not less than Five Hundred Thousand Dollars (\$500,000) for injuries to any number of persons in any one accident or occurrence; and, Five Hundred Thousand Dollars (\$500,000) for damage to property in any one accident or occurrence. Tenant shall furnish to Landlord at Landlord's written request reasonable evidence of Tenant's compliance with the provisions of this paragraph, such as certificates of insurance. Tenant further agrees that Tenant shall be solely responsible for procuring and maintaining casualty insurance on the improvements constructed by Tenant on the Premises.

Section 11.02. Waiver of Subrogation. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all right of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Premises, improvements to the Premises, or personal property within the Premises, by reason of fire or the elements, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees to the extent such loss is covered by a policy of insurance. Landlord and Tenant agree immediately to give their respective insurance companies written notice of terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers, in amounts and to the extent Tenant deems reasonable and necessary.

## ARTICLE XII

### Condemnation

Section 12.01. Termination of Lease. If Landlord's fee simple title to the Premises shall be taken for any public or any quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof (herein the "Taking"), then this Lease shall terminate automatically as of the date possession is given to the condemning authority. If there is a Taking of any material part of the Premises as to render the remainder thereof substantially unusable for the purposes for which the Premises were leased, then Tenant shall have the right to terminate this Lease on thirty (30) days' notice to the other given within ninety (90) days before the estimated date of possession being given to the condemning authority. In the event of a partial taking and the remainder of the Premises are usable, rent shall be reduced in proportion to the amount of square footage condemned.

Section 12.02. Compensation. All compensation awarded or paid upon a total or partial Taking of the Premises shall be distributed pro rata to Landlord for the value of the real estate and to Tenant for the Tenant Improvements.

Section 12.03. Taking for Temporary Use. If there is a Taking of the Premises for temporary use, this Lease shall continue in full force and effect, and Tenant shall continue to comply with Tenant's obligations under this Lease, except to the extent compliance shall be rendered impossible or impracticable by reason of the Taking.

## ARTICLE XIII

### Indemnity and Liability

#### Section 13.01. Indemnity.

- a. As used in Article XIII, "Claims" means any claims, suits, proceedings, actions, causes of action, mechanics or materialman's liens, responsibility, liability, demands, judgments, and executions.
- b. Tenant hereby indemnifies and agrees to save harmless Landlord from and against all Claims, which (i) arise from any work performed by Tenant on the Premises; (ii) arise from or are in connection with the possession, use, occupation, management, repair, maintenance or control of the Premises or any portion thereof; (iii) arise from or are in connection with any act or omission of Tenant or Tenant's Agents; (iv) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Tenant; or (v) result from injury to person or property or loss of life sustained in or about the Premises except to the extent arising out of any negligence or willful misconduct of Landlord.
- c. Landlord hereby indemnifies and agrees to save Tenant harmless from and against all claims which (i) arise from or are in connection with any act or omission of Landlord; (ii) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Landlord; or (iii) result from injury to person or property or loss of life sustained in or about the Premises to the extent arising out of any negligence or willful misconduct of Landlord. Provided, however, that in any case where the claims are of a nature such that Landlord's liability would be limited by limitations or immunities under the Kansas Tort Claims Act, if the claims were brought directly against Landlord, Landlord's liability under this subsection c. shall be subject to the same limitations and immunities.
- d. Indemnitor shall defend any Claims against Indemnitee with respect to the foregoing at Indemnitor's sole cost and with counsel reasonably satisfactory to Indemnitee. Indemnitor shall pay, satisfy and discharge any judgments, orders

and decrees which may be recovered against Indemnatee in connection with any Claims.

- e. This Section 13.01 shall expressly survive the termination or expiration of this Lease.

Section 13.02. Liability Insurance.

- a. Tenant shall provide and maintain a comprehensive policy of liability insurance with respect to the Premises as set forth in Section 11.01 hereof. Landlord and any designee of Landlord shall be named as additional insureds. The liability insurance policy shall protect Landlord, Tenant and any designee of Landlord against any liability which arises from any occurrence on or about the Premises or any appurtenance of the Premises, or which arises from any of the Claims described in Section 13.01 against which Tenant is required to indemnify Landlord.
- b. The policy shall be written by an insurance company reasonably satisfactory to Landlord with coverage limits reasonably satisfactory to Landlord.

Section 13.03. Inability to Perform.

- a. If Landlord fails to perform any of its obligations under this Lease as a result of Acts of God; strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act of war; fire or other casualty; delays caused by Tenant; and causes beyond the reasonable control of Landlord (a "Force Majeure"), Landlord shall not be liable for loss or damage for the failure, and Tenant shall not be released from any of its obligations under this Lease.
- b. If Landlord is delayed or prevented from performing any of its obligations as a result of a Force Majeure, the period of delay or prevention shall be added to the time herein provided for the performance of any such obligation.

## ARTICLE XIV

### Covenant of Quiet Enjoyment

Landlord covenants, represents and warrants that it has good and marketable fee simple title to the Premises free and clear of all liens, assessments, leases, taxes and other encumbrances except those title exceptions specifically approved by Tenants in writing ("Approved Title Exceptions"). Landlord covenants that Landlord has the authority to lease the Premises to Tenant, and if Tenant pays the rent and all other charges provided for in this Lease, performs all of its obligations provided for under this Lease, and observes all of the other provisions of this Lease, Tenant shall peaceably and quietly enjoy the Premises in accordance with the terms of this Lease without any interruption or disturbance from Landlord.

## ARTICLE XV

### Default

Section 15.01. Events of Default. Each of the following events shall be a default hereunder by Tenant and a breach of this Lease:

- a. If Tenant shall file a petition in bankruptcy, or insolvency, or for reorganization, or arrangement under the bankruptcy laws of the United States, or any insolvency act of any state, or shall voluntarily take advantage of any such law or act by answer or otherwise, or shall be dissolved, or shall make an assignment for the benefit of creditors;
- b. If involuntary proceedings under any such bankruptcy law, or insolvency act, or for the dissolution of a corporation shall be instituted against Tenant, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant, and such proceedings shall not be dismissed, or such receivership or trusteeship vacated within one hundred (100) days after such institution or appointment;
- c. If Tenant shall fail to pay Landlord any rent or additional rent within thirty (30) days after receipt of written notice from Landlord that the same are due and payable; or
- d. If Tenant shall breach or fail to perform any of the agreements, terms, covenants, or conditions hereof on Tenant's part to be performed other than the payment of rent or additional rent, and such nonperformance shall continue for a period of thirty (30) days after receipt of written notice thereof by Landlord to Tenant (provided, however, that Tenant shall not be in default hereunder if Tenant shall, within such thirty (30) day cure period, commence and at all times thereafter diligently pursue all practicable efforts to cure the default).

If any such default shall occur and shall not be cured within the applicable cure period, if any, Landlord shall have the right to cancel and terminate this Lease, as well as all of the right, title, and interest of Tenant hereunder, by giving to Tenant written notice of such cancellation and termination, and upon such notice, this Lease and the term hereof, as well as all of the right, title, and interest of Tenant hereunder, shall expire in the same manner and with the same force and effect, as if the expiration of the time fixed in such notice of cancellation and termination were the end of the Term. Upon the Expiration Date the Lease shall be deemed null, void and of no force and effect, and both parties shall be relieved of any further obligation to the other under the terms of the Lease. There will not be a default until any mortgagee has received written notice of a failure of Tenant to perform and the mortgagee's cure period has expired.

Section 15.02. Landlord's Right to Cure. Upon any uncured default, Landlord at its option may, but shall not be obligated to, make any payment required of Tenant herein, or comply with any agreement, term, covenant, or condition required hereby to be performed by Tenant and the amount so paid, together with interest thereon at the rate of ten percent (10%) per annum from the date of such payment by Landlord shall be deemed to be additional rent hereunder payable by Tenant and collectible as such by Landlord with the next succeeding monthly installment of rent. Landlord shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain therein until the same shall have been corrected or remedied, but neither any such expenditure, nor any such performance, by Landlord shall be deemed to waive or release Tenant's default or the right of Landlord to take such action as may be otherwise permissible hereunder in the case of such default. There will not be a default until any mortgagee has received written notice of a failure of Tenant to perform and the mortgagee's cure period has expired.

15.03. Landlord Default; Tenant Remedies. If Landlord fails to pay any amount due under the Lease, or shall breach or fail to perform any other agreement, term, covenant or condition of the Lease, and such failure shall continue for a period of thirty (30) days after Landlord's receipt of written notice from Tenant of such failure, Landlord shall be in default and in breach of this Lease. In the event of a Landlord default, Tenant shall have the right, but not the obligation, to cancel and terminate this Lease immediately by providing Landlord with written notice of such termination, and upon such Expiration Date, the Lease shall be deemed null, void and of no force and effect, and that both parties shall be relieved of performing any further obligation under the terms of the Lease, but shall not be relieved of liability for any additional remedy available to Tenant. In the event of a Landlord default, Tenant shall also have the right, but not the obligation, to pursue any other remedy available to Tenant at law or in equity, including but not limited to specific performance, offset, deduction and abatement. Tenant's remedies under this Section 15.03 shall be cumulative and not mutually exclusive.

## ARTICLE XVI

### Interpretation, Notices, Miscellaneous

#### Section 16.01. Interpretation.

- a. If any provision of this Lease or the application of any provision of this Lease to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.
- b. The captions and headings used throughout this Lease are for convenience of reference only and shall not affect the interpretation of this Lease.

- c. This Lease may be executed in several counterparts; but the counterparts shall constitute but one and the same instrument.
- d. This agreement shall be interpreted in accordance with the internal laws of the State of Kansas without giving effect to conflict of laws principles.
- e. This Lease shall not be construed more or less favorably with respect to either party as a consequence of the Lease or various provisions hereof having been drafted by one of the parties hereto.
- f. Capitalized terms not defined herein shall have the same meaning as contained in the Development Agreement.
- g. The recitals set forth above and the Exhibits attached to this Lease are, by this reference, incorporated into and deemed a part of this Lease.

Section 16.02. No Oral Changes. This Lease contains the entire agreement of the parties with respect to the subject matter hereof, and may not be changed or terminated orally. The parties agree that the Original Ground Lease is amended and restated in its entirety, and that this Lease and Ground Lease 1-B supersede the Original Ground Lease in all respects. Notwithstanding the foregoing, this Lease and Ground Lease 1-B are separate in all respects, and a termination, amendment, or default with respect to one will in no way affect the other.

Section 16.03. Communications. No notice, request, consent, approval, waiver or other communication under this Lease shall be effective unless the same is in writing and is mailed by registered or certified mail, postage prepaid, addressed as follows:

- a. If intended for Landlord, a written communication shall be effective if mailed to the address designated as Landlord's Notice Address in Article I or to such other address as Landlord designates by giving notice to Tenant; and
- b. If intended for Tenant, a written communication shall be effective if mailed to the address designated as Tenant's Notice Address in Article I or to such other address as Tenant shall designate by giving notice thereof to Landlord.

Section 16.04. Successors and Assigns. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs and assigns.

Section 16.05. Time of the Essence. The time of the performance of all of the covenants, conditions and agreements of this Lease is of the essence of this Lease.

Section 16.06. Assignment; Sublease. Tenant may freely assign or sublease all or any portion of the Premises without Landlord's consent. If Tenant assigns this Lease to Alwaysholdin LLC or some other entity controlled by or affiliated with King of Freight LLC, Alwaysholdin LLC or the other entity controlled by or affiliated with King of Freight LLC shall fully assume Tenant's place under this Lease and shall enjoy and be subject to all rights,

responsibilities, obligations, covenants, benefits and legal duties enjoyed by Tenant hereunder. Upon such assignment to Alwaysholdin LLC or other entity controlled by or affiliated with King of Freight LLC, all obligations of WaterWalk, LLC hereunder as Tenant shall be assumed by Alwaysholding LLC or such other entity and WaterWalk, LLC's obligations hereunder shall be extinguished and WaterWalk LLC shall have no further responsibility or potential liability hereunder.

Section 16.07. Authority. The undersigned both represent and warrant they have authority to bind the respective parties to all of the terms of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amended and Restated WaterWalk Ground Lease No. 1-A instrument the date first above written.

CITY OF WICHITA, KANSAS

WATERWALK LLC

By \_\_\_\_\_  
Jeff Longwell, Mayor

“Landlord”

By \_\_\_\_\_  
Jack P. DeBoer, President

“Tenant”

Attest:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved As To Form:

\_\_\_\_\_  
Jennifer Magana, City Attorney and Director of Law

**Exhibit A**

***"Original Ground Lease Land"***

A portion of Lots 1 and 2, Block 1, WaterWalk Phase 1 Addition, an Addition to Wichita, Sedgwick County, Kansas, formerly described as follows:

A tract of platted and unplatted land lying in the Southeast Quarter, Section 20, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; being a part of Lot 1, EASTBANK FIRST ADDITION, to the City of Wichita, a part of Lots 80 and 81, and the AT&SF Railroad Right of Way, RIVER ADDITION, to the City of Wichita, a portion of the Street Rights of Way for Wichita Street and Dewey Street, a portion of the Right of Way for Kellogg Highway and a portion of that part of the Southeast Quarter lying between EASTBANK FIRST ADDITION and the Left High Bank of the Arkansas River. Said tract of land being particularly described as follows:

COMMENCING at the Southwest corner of Lot 1, said EASTBANK FIRST ADDITION, said point being on the existing North Right of Way line of Kellogg Highway;  
THENCE North 89°56'29" West, along said North Right of Way line, a distance of 10.82 feet to the POINT OF BEGINNING;

THENCE continuing North 89°56'29" West, along said line, a distance of 59.80 feet;

THENCE North 00°00'13" West, a distance of 414.67 feet;

THENCE North 89°59'47" East, a distance of 219.62 feet to a point on the Proposed West Right of Way line of Wichita Street;

THENCE along said Proposed West Right of Way line for the following six (6) courses:

1. South 00°00'13" East, a distance of 10.71 feet;
2. along a curve to the left, having a radius of 255.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 189.77 feet, and arc length of 194.45 feet;
3. on a reverse curve to the right, having a radius of 70.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 52.09 feet, and arc length of 53.38 feet;
4. South 00°00'13" East, a distance of 88.39 feet;
5. along a curve to the right, having a radius of 220.00 feet, a central angle of 22°03'01", a chord bearing of South 11°01'18" West, a chord distance of 84.15 feet, and arc length of 84.67 feet;
6. on a reverse curve to the left, having a radius of 280.00 feet, a central angle of 07°48'46", a chord bearing of South 18°08'25" West, a chord distance of 38.15 feet, and arc length of 38.18 feet to a point on the Proposed North Right of Way line of Kellogg Highway;

THENCE along said Proposed North Right of Way line for the following five (5) courses:

1. South 80°17'29" West, a distance of 12.49 feet;
2. South 80°41'34" West, a distance of 63.05 feet;
3. South 83°18'29" West, a distance of 68.16 feet;
4. South 85°24'29" West, a distance of 76.21 feet;
5. South 85°37'26" West, a distance of 3.66 feet;

THENCE North 00°00'13" West, a distance of 54.33 feet to the POINT OF BEGINNING.

Said tract of land containing 124,282 square feet or 2.8531 acres, more or less.

**Exhibit B**

***"Premises"***

A portion of Lot 1 and/or Lot 2, Block 1, WaterWalk Phase 1 Addition, an Addition to Wichita, Sedgwick County, Kansas, formerly described as follows:

A tract of platted and unplatted land lying in the Southeast Quarter, Section 20, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, being a part of Lot 1, EASTBANK FIRST ADDITION, to the City of Wichita, a part of Lots 80 and 81, and the AT&SF Railroad Right of Way, RIVER ADDITION, to the City of Wichita, a portion of the Street Rights of Way for Wichita Street and Dewey Street, a portion of the Right of Way for Kellogg Highway and a portion of that part of the Southeast Quarter lying between EASTBANK FIRST ADDITION and the Left High Bank of the Arkansas River. Said tract of land being particularly described as follows:

COMMENCING at the Southwest corner of Lot 1, said EASTBANK FIRST ADDITION, said point being on the existing North Right of Way line of Kellogg Highway;

THENCE North 89°56'29" West, along said North Right of Way line, a distance of 10.82 feet to the POINT OF BEGINNING;

THENCE continuing North 89°58'29" West, along said line, a distance of 59.80 feet;

THENCE North 00°00'13" West, a distance of 342.58 feet;

THENCE North 89°59'47" East, a distance of 227.12 feet to a point on the Proposed West Right of Way line of Wichita Street;

THENCE along said Proposed West Right of Way line for the following five (5) courses:

1. on a non tangent curve to the left, having a radius of 255.00 feet, a central angle of 29°45'51", a chord bearing of South 28°48'44" East, a chord distance of 130.98 feet, and arc length of 132.47 feet;
2. on a reverse curve to the right, having a radius of 70.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 52.09 feet, and arc length of 53.38 feet;
3. South 00°00'13" East, a distance of 88.39 feet;
4. along a curve to the right, having a radius of 220.00 feet, a central angle of 22°03'01", a chord bearing of South 11°01'18" West, a chord distance of 84.15 feet, and arc length of 84.67 feet;
5. on a reverse curve to the left, having a radius of 280.00 feet, a central angle of 07°48'46", a chord bearing of South 18°08'25" West, a chord distance of 36.15 feet, and arc length of 38.18 feet to a point on the Proposed North Right of Way line of Kellogg Highway;

THENCE along said Proposed North Right of Way line for the following five (5) courses:

1. South 80°17'29" West, a distance of 12.49 feet;
2. South 80°41'34" West, a distance of 83.05 feet;
3. South 83°18'29" West, a distance of 68.16 feet;
4. South 85°24'29" West, a distance of 76.21 feet;
5. - South 85°37'26" West, a distance of 3.66 feet;

THENCE North 00°00'13" West, a distance of 54.33 feet to the POINT OF BEGINNING.

Said tract of land containing 108,300 square feet or 2.4862 acres, more or less.

**Exhibit C**

***"North Development Parcel"***

A portion of Lot 1 and/or Lot 2, Block 1, WaterWalk Phase 1 Addition, an Addition to Wichita, Sedgwick County, Kansas, formerly described as follows:

A tract of platted and unplatted land lying in the Southeast Quarter, Section 20, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; being a part of Lot 1, EASTBANK FIRST ADDITION, to the City of Wichita, a part of Lots 80 and 81, and the AT&SF Railroad Right of Way, RIVER ADDITION, to the City of Wichita, a portion of the Street Rights of Way for Wichita Street and Dewey Street, a portion of the Right of Way for Kellogg Highway and a portion of that part of the Southeast Quarter lying between EASTBANK FIRST ADDITION and the Left High Bank of the Arkansas River. Said tract of land being particularly described as follows:

COMMENCING at the Southwest corner of Lot 1, said EASTBANK FIRST ADDITION, said point being on the existing North Right of Way line of Kellogg Highway;  
THENCE North 89°56'29" West, along said North Right of Way line, a distance of 10.82 feet to the POINT OF BEGINNING;

THENCE continuing North 89°56'29" West, along said line, a distance of 59.80 feet;

THENCE North 00°00'13" West, a distance of 414.67 feet;

THENCE North 89°59'47" East, a distance of 219.82 feet to a point on the Proposed West Right of Way line of Wichita Street;

THENCE along said Proposed West Right of Way line for the following six (6) courses:

1. South 00°00'13" East, a distance of 10.71 feet;
2. along a curve to the left, having a radius of 255.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 189.77 feet, and arc length of 194.45 feet;
3. on a reverse curve to the right, having a radius of 70.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 52.09 feet, and arc length of 53.38 feet;
4. South 00°00'13" East, a distance of 88.39 feet;
5. along a curve to the right, having a radius of 220.00 feet, a central angle of 22°03'01", a chord bearing of South 11°01'18" West, a chord distance of 84.15 feet, and arc length of 84.67 feet;
6. on a reverse curve to the left, having a radius of 280.00 feet, a central angle of 07°48'46", a chord bearing of South 18°08'25" West, a chord distance of 38.15 feet, and arc length of 38.18 feet to a point on the Proposed North Right of Way line of Kellogg Highway;

THENCE along said Proposed North Right of Way line for the following five (5) courses:

1. South 80°17'29" West, a distance of 12.49 feet;
2. South 80°41'34" West, a distance of 63.05 feet;
3. South 83°18'29" West, a distance of 68.16 feet;
4. South 85°24'29" West, a distance of 76.21 feet;
5. South 85°37'26" West, a distance of 3.66 feet;

THENCE North 00°00'13" West, a distance of 54.33 feet to the POINT OF BEGINNING.

Said tract of land containing 124,282 square feet or 2.8531 acres, more or less.

LESS AND EXCEPT:

A tract of platted and unplatted land lying in the Southeast Quarter, Section 20, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, being a part of Lot 1, EASTBANK FIRST ADDITION, to the City of Wichita, a part of Lots 80 and 81, and the AT&SF Railroad Right of Way, RIVER ADDITION, to the City of Wichita, a portion of the Street Rights of Way for Wichita Street and Dewey Street, a portion of the Right of Way for Kellogg Highway and a portion of that part of the Southeast Quarter lying between EASTBANK FIRST ADDITION and the Left High Bank of the Arkansas River. Said tract of land being particularly described as follows:

COMMENCING at the Southwest corner of Lot 1, said EASTBANK FIRST ADDITION, said point being on the existing North Right of Way line of Kellogg Highway;

THENCE North 89°56'29" West, along said North Right of Way line, a distance of 10.82 feet to the POINT OF BEGINNING;

THENCE continuing North 89°56'29" West, along said line, a distance of 59.80 feet;

THENCE North 00°00'13" West, a distance of 342.58 feet;

THENCE North 89°59'47" East, a distance of 227.12 feet to a point on the Proposed West Right of Way line of Wichita Street;

THENCE along said Proposed West Right of Way line for the following five (5) courses:

1. on a non tangent curve to the left, having a radius of 255.00 feet, a central angle of 29°45'51", a chord bearing of South 28°48'44" East, a chord distance of 130.98 feet, and arclength of 132.47 feet;
2. on a reverse curve to the right, having a radius of 70.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 52.09 feet, and arc length of 53.38 feet;
3. South 00°00'13" East, a distance of 88.39 feet;
4. along a curve to the right, having a radius of 220.00 feet, a central angle of 22°03'01", a chord bearing of South 11°01'18" West, a chord distance of 84.15 feet, and arc length of 84.67 feet;
5. on a reverse curve to the left, having a radius of 280.00 feet, a central angle of 07°48'46", a chord bearing of South 18°08'25" West, a chord distance of 38.15 feet, and arc length of 38.18 feet to a point on the Proposed North Right of Way line of Kellogg Highway;

THENCE along said Proposed North Right of Way line for the following five (5) courses:

1. South 80°17'29" West, a distance of 12.49 feet;
2. South 80°41'34" West, a distance of 63.05 feet;
3. South 83°18'29" West, a distance of 68.18 feet;
4. South 65°24'29" West, a distance of 76.21 feet;
5. South 85°37'26" West, a distance of 3.66 feet;

THENCE North 00°00'13" West, a distance of 54.33 feet to the POINT OF BEGINNING.

Said tract of land containing 108,300 square feet or 2.4882 acres, more or less.

**AMENDED AND RESTATED  
WATERWALK GROUND LEASE NO. 1-B**

THIS AMENDED AND RESTATED GROUND LEASE NO. 1-B, is made and entered into at Wichita, Kansas, as of the \_\_\_\_ day of May, 2019.

BY AND BETWEEN

City of Wichita, Kansas,  
a Kansas municipality,

“Landlord”

AND

WaterWalk LLC,  
a Kansas limited liability company,

“Tenant”

W I T N E S S E T H: That;

WHEREAS, Landlord is the owner of the Premises described herein;

WHEREAS, Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord on the terms and conditions set forth in this Lease;

WHEREAS, Landlord and Tenant have heretofore entered into that certain Development Agreement dated September 10, 2002, amended on December 2, 2003, October 12, 2004, June 20, 2006, December 16, 2008, and in August, 2012 (as amended, collectively, the “Development Agreement”);

WHEREAS, Landlord and Tenant have heretofore entered into that certain WaterWalk Ground Lease No. 1 dated December 21, 2004 (the “Original Ground Lease”), pursuant to which Tenant leases from Landlord the land described on Exhibit A (the “Original Ground Lease Land”);

WHEREAS, since the execution of the Original Ground Lease, Tenant has contemplated the development and use of the land described on Exhibit B (the “Premises”) separate from the development and use of the land described on Exhibit C (the “South Development Parcel”) (the Premises and the South Development Parcel together constitute all of the Original Ground Lease Land);

WHEREAS, to facilitate the development and use of the Premises separate from the development and use of the South Development Parcel, Landlord and Tenant desire to amend and restate the Original Ground Lease in its entirety, in order to separate the Original Ground Lease into two distinct Amended and Restated Ground Leases, such that Tenant leases the Premises pursuant to one Amended and Restated Ground Lease and the South Development Parcel pursuant to a separate Amended and Restated Ground Lease; and

WHEREAS, Landlord and Tenant desire to enter into this Lease with respect to the Premises and simultaneously enter into that certain Amended and Restated WaterWalk Ground Lease No. 1-A ("Ground Lease 1-A") with respect to the South Development Parcel.

NOW, THEREFORE, in consideration of the Premises and the mutual covenants contained herein, the parties agree as follows:

## ARTICLE I

### Basic Terms and Definitions

The following basic terms and definitions shall be applicable to the various provisions of this Lease:

Minimum Rent. The Minimum Rent is set forth in Section 5.01 below.

Notices. The addresses for any notices required or permitted hereunder shall be as follows:

a. If to Landlord: c/o City Clerk  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

With a copy to: City Attorney  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

b. If to Tenant: WaterWalk LLC  
2121 N. Webb Road  
Wichita, Kansas 67206

With a copy to: Harvey R. Sorensen  
Foulston Siefkin LLP  
1551 N Waterfront Pkwy, Ste 100  
Wichita, Kansas 67206

or such other location as the parties may from time to time direct in writing.

Premises. The land described on Exhibit B attached hereto and incorporated herein by reference.

Term. The Term of the Lease shall be ninety-nine (99) years, commencing on the Commencement Date and expiring on the Expiration Date, unless earlier terminated pursuant to the terms hereof.

## ARTICLE II

### Granting Clause

Section 2.01. Demise. In consideration of the obligation of Tenant to pay all forms of rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Premises for the Term, all upon the terms and conditions set forth in this Lease; provided, however, that no existing building nor any building which is constructed or placed upon the Property, either temporarily or permanently, shall be used for the purpose of housing the operation of any multi-game, casino-style gambling in the Premises.

## ARTICLE III

### Construction of Improvements

Section 3.01. *[Intentionally Deleted]*

Section 3.02. Possession of Premises. Landlord represents and warrants that Tenant's possession of the Premises shall be free of any claim of possessory rights by any person or entity except that of Landlord, Tenant or as created by any Approved Title Exception (defined below). Landlord shall have the right to access the property to maintain the adjacent public improvements after due notice to the Tenant, provided such maintenance shall not interfere with the conduct of Tenant's business and provided that Landlord shall be solely responsible for all costs and expenses and shall fully restore Tenant's premises.

Section 3.03. Tenant's Construction. Tenant may construct one or more buildings and related improvements on the Premises ("Tenant Improvements"). Tenant shall not construct on the Premises (i) any structures that are utilized as a "fast food" restaurant that includes a "drive-through" window, (ii) car lots for the sale and/or storage of new or used automobiles, (iii) massage parlors, (iv) escort services, or (v) adult cinema, film, video, or toy stores. Any such construction shall be at Tenant's sole cost and expense, and shall be in accordance with all applicable laws, ordinances, and regulations, including, without limitation, the terms and conditions of the zoning requirements except as noted in the Development Agreement, as amended. Tenant shall have the right to demolish, rebuild, remodel, or alter such improvements at any time during the term of this Lease in Tenant's sole discretion, or to build additional improvements on the Premises, as long as such activities are carried out in compliance with all applicable laws, ordinances, and regulations. Until this Lease shall terminate as provided herein, Tenant shall own in fee simple all such improvements so constructed by Tenant and shall be entitled to all benefits of such ownership, including, without limitation, depreciation under applicable tax laws. Upon termination of this Lease for any reason, fee simple title to all such

permanent improvements and fixtures, but not to trade fixtures and personal property, shall immediately vest in Landlord, and Tenant shall execute such deeds or other instruments reasonably required by Landlord to evidence such ownership of record.

## ARTICLE IV

### Term

Section 4.01. Commencement Date. The Term of this Lease commenced on December 21, 2004 (the "Commencement Date").

Section 4.02. Short Form Lease. Upon request of either party, the other shall execute (a) a document in recordable form setting forth the exact Commencement Date of the Term hereof and/or (b) a short form lease or memorandum of lease in proper form for recording, setting forth the Commencement Date and the basic provisions of this Lease, except for the rental payable hereunder or other similar proprietary matters.

Section 4.03. Expiration Date. Unless earlier terminated pursuant to the terms hereof, this Lease shall expire at the end of the Term, including all renewals thereof, as defined in Article I above (the "Expiration Date").

Section 4.04. Holding Over. In the event Tenant remains in possession of the Premises after the Expiration Date, and Landlord elects to accept rental payments, Tenant shall be deemed to be a tenant from month to month.

## ARTICLE V

### Rent

Section 5.01. Minimum Rent. As of the date first written above, Tenant has paid Landlord a minimum fixed annual rent ("Minimum Rent") of One Dollar (\$1) in one (1) installment covering the Term of this Lease as defined in Article I above.

Section 5.02. Additional Rent. The Tenant will also pay, without notice, and without abatement, deduction, or setoff, except as otherwise specifically allowed herein, as additional rent, all sums, taxes, assessments, costs, expenses, and other payments which the Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any nonpayment thereof, the Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided herein or by law in the case of nonpayment of rent.

As Additional Annual Rent Tenant shall pay a sum equal to twenty-five percent (25%) of the Adjusted Net Cash Flow commencing with the first day the Tenant Improvements open for business. The Tenant shall calculate Adjusted Net Cash Flow for each Current Year within forty-five (45) days after the end of the Current Year (or portion thereof) and provide that

calculation, and pay to the Landlord the Additional Annual Rent, within sixty (60) days after the end of the Current Year. Additional Annual Rent shall continue until this Lease expires. Adjusted Net Cash Flow is Gross Revenues less Total Expenses, less the total amount of capital expenses for furniture, fixtures, and equipment for the Tenant Improvements in excess of the aggregate amount expended from any reserve during such year.

Tenant agrees to allow City Representative, after submission of the calculations of Additional Annual Rent for such year, to review and audit Tenant's books and records for compliance with Tenant's obligations hereunder. If an audit by the City reveals a material understatement of the amount due the City, then Tenant shall pay all reasonable costs of such audit by an independent certified public accountant of reputable standing. In making the calculations required hereunder, Tenant and City shall apply generally accepted accounting principles, consistently applied.

Section 5.03. Place of Payment. Minimum Rent, and all additional rent and other charges owed by Tenant to Landlord under the Lease, shall be payable by Tenant to Landlord at Landlord's Notice Address set forth in Article I above or to any other place designated by written notice delivered by Landlord to Tenant at least ten (10) days prior to the date such amount is due to Landlord.

## ARTICLE VI

### Property Taxes

Section 6.01. Taxes. Tenant shall pay as additional rent during the Term and any extensions thereof, all ad valorem taxes, and all other governmental taxes or charges that may be levied against the Premises. If not billed directly to Tenant, Landlord shall, after receipt of any tax bill or other notice of tax or special assessments due on such improvements, promptly furnish Tenant with a copy thereof. Tenant shall issue its check payable to the applicable taxing authority in the amount indicated and shall mail such check to the applicable taxing authority. If Landlord receives receipts from the taxing authority evidencing the payment thereof, Landlord will promptly mail copies of such receipts to Tenant. Taxes for the first and last years hereof shall be prorated. All personal property taxes shall be the responsibility of Tenant. Landlord shall not pass through to the Tenant or the Premises any cost for design and construction of the Public Improvements.

Section 6.02. Payment by Landlord. If Tenant should fail to pay any taxes, assessments, governmental charges or fees required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects, pay such taxes, assessments and governmental charges. Any sums so paid by Landlord shall be deemed to be additional rent owing by Tenant to Landlord and shall be due and payable upon demand as additional rent. Landlord may only step in and pay such taxes or charges on Tenant's behalf after Landlord has provided Tenant with written notice thereof and a reasonable time to pay such amounts. Provided, however, that if Tenant timely protests the imposition of any taxes and diligently

pursues the contest of any such assessment, then Landlord shall forebear any such payment until the protest is resolved or the taxing authority seeks to foreclose any tax lien.

## ARTICLE VII

### Condition of Premises, Mechanic's Liens, Liability Insurance

Section 7.01. Representations or Warranties. The Landlord warrants and represents to, and agrees with, the other Party as follows:

- a. It is a municipality and political subdivision of the State of Kansas, duly incorporated and validly existing under the laws of the State of Kansas.
- b. It has full power and authority to execute this Agreement and consummate the transactions contemplated hereby.
- c. Neither the execution and delivery of this Agreement and the other documents contemplated herein will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.
- d. To the best of Landlord's knowledge, other than ground water pollution, there are no "Hazardous Materials" (such term shall include, without limitation, substances which are flammable, explosive, corrosive, radioactive, toxic, petroleum and petroleum products and any substances defined as hazardous substances, hazardous materials, toxic substances, or hazardous wastes in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any similar state laws, all amendments to these laws and regulations adopted or publications promulgated pursuant to these laws) presently located in, on, or under the premises including, without limitation, the subsurface soils and groundwater, have migrated to the premises from another source, have been installed, used, generated, manufactured, stored, released, or disposed of on, under, or about the premises by Landlord or any third -person, nor has Landlord received any notice or communication regarding any alleged Hazardous Materials on or about the premises and that the premises is in compliance with all federal, state, and local laws, ordinances, rules and regulations relating to any such Hazardous Materials. In the event any Hazardous Materials are found on the premises during the term or any extension of the term hereof, Landlord shall bear all costs for the removal and remediation of the Hazardous Materials and shall restore the premises to substantially the same condition as it was in immediately prior to such removal and remediation work.

Landlord shall immediately notify Tenant in writing of any notice, complaint, warning, claim, report, or communication received by Landlord from any federal, state, or local governmental or regulatory agency regarding Hazardous Materials on the premises and provide Tenant with a copy of the same within ten (10) days of Landlord's receipt thereof. This does not waive the limitation under the Kansas Tort Claims Act.

Landlord agrees to indemnify and hold Tenant harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments imposed against Tenant, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, including reasonable attorneys' fees, to the extent the same arise out of, or in connection with, any Hazardous Materials currently located in, on or under the premises. Tenant agrees to indemnify and hold Landlord harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments against Landlord, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, to the extent the same arise out of, or in connection with, any Hazardous Materials which are hereafter released in, on or under the premises by Tenant or any subtenant thereof.

Section 7.02. Mechanics' Liens. If any mechanic's or materialman's lien is filed against the Premises as a result of any work or act of Tenant, Tenant shall discharge the lien within forty (40) days after the filing of the lien, provided, however, that for so long as Tenant posts a bond and continues to diligently contest the amounts claimed due, it shall not be obligated to discharge said lien.

Section 7.03. Insurance Covering Tenant's Work. Tenant shall not make any improvements, alterations, repairs or installations, or perform any other work to the Premises unless prior to the commencement of the work Tenant shall obtain or cause its contractors to obtain (and during the performance of the work keep in force) public liability and worker's compensation insurance to cover every contractor to be employed. The policies shall be non-cancelable without ten (10) days' prior written notice to Landlord, and such insurance shall be carried with companies reasonably satisfactory to Landlord. Prior to the commencement of the work, Tenant shall deliver duplicate originals or certificates of the insurance policies to Landlord.

## ARTICLE VIII

### Repairs, Compliance, Surrender

Section 8.01. Repairs and Maintenance by Tenant. Tenant shall make all repairs to the Premises which Tenant concludes are necessary or desirable to keep the Premises in good order and repair.

Section 8.02. Compliance with Laws. Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises, and otherwise comply with all applicable laws, ordinances and governmental regulations, and recorded restrictions and covenants. During the Term Landlord may not permit any additional restrictions, covenants or any other encumbrances to be placed on any portion of the Premises

without Tenant's prior written consent, which consent may be granted or withheld by Tenant in Tenant's sole discretion. Tenant shall have no responsibility for the failure of any Sub-Tenant to comply with the provisions of this Section.

Section 8.03. Surrender of Premises. Upon the expiration of this Lease, Tenant shall quit and surrender the Premises together with all alterations, fixtures, installations, additions and improvements which may have been made in or attached on or to the Premises. Upon surrender, Tenant may remove its personal property and trade fixtures.

## ARTICLE IX

### Services, Utilities, Access

Tenant covenants and agrees to pay for all utility deposits as well as all utility charges, including but not limited to natural gas, electricity, water, trash, and garbage removal and sewer in a timely manner as they may come due during the Term thereof.

Landlord agrees to maintain access from the Premises to Main Street and Waterman Street during the term of the Lease; provided, this provision shall not impair Landlord's ability to temporarily close access for street repairs, maintenance, utilities and similar items, nor impair its ability to grant parade permits or otherwise allow public assemblage and use of the public street.

## ARTICLE X

### Mortgage on Tenant's Interest

Section 10.01. Right to Encumber. Landlord hereby grants to Tenant the right to mortgage, grant a security interest in, and otherwise encumber, Tenant's interest under this Lease, and Tenant's right, title and interest in and to the improvements constructed by Tenant on the Premises (hereinafter a "Leasehold Mortgage") without obtaining Landlord's consent.

Section 10.02. Cure by Mortgagee. Landlord shall give to any mortgagee who has notified Landlord of its Leasehold Mortgage, simultaneously with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant and no such notice to Tenant shall be effective unless a copy is so served upon said mortgagee. Such mortgagee shall have the right, but not the obligation, to cure any default by Tenant hereunder, by completing such cure at any time within sixty (60) days following the expiration of the cure period otherwise applicable to Tenant, or, if said default is of a nature that it may not reasonably be cured within the applicable cure period, then if mortgagee commences to cure during the applicable cure period and proceeds with such cure diligently and with reasonable dispatch, and Landlord shall accept performance by or at the instance of such mortgagee as if the same had been made by Tenant.

Section 10.03. Foreclosure of Leasehold Mortgage. The mortgagee under a Leasehold Mortgage may become the legal owner and holder of the interest of Tenant under this Lease, including, without limitation, the interest of Tenant in all improvements erected by Tenant on the

Leased Premises, by foreclosure or by an assignment of this Lease in lieu of foreclosure, without Landlord's consent. In such event, such mortgagee shall have the right thereafter to assign this Lease without the consent of Landlord, but otherwise subject to the terms and provisions of this Lease.

Section 10.04. Non-Disturbance Agreement. In the event of any termination of this Lease due to a Tenant default prior to the expiration of the Term, Landlord shall provide any mortgagee with written notice of the termination together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. Said mortgagee shall then have an option to obtain a new lease upon the same terms and conditions set forth in this Lease. This option must be exercised by written notice to Landlord given within 30 days from the date said mortgagee receives the Landlord's notice and statement. The new lease shall require said mortgagee to cure all monetary defaults of Tenant under this Lease. Any non-monetary default of Tenant shall be waived by Landlord, providing mortgagee proceeds with reasonable promptness to obtain possession, continues diligently to attempt to cure the default, pays the Minimum Rent, and satisfies Tenant's other obligations under this Lease.

## ARTICLE XI

### Destruction and Insurance

Section 11.01. Insurance. Tenant agrees, at Tenant's cost and expense, to obtain and keep in force and effect during the life of this Lease and any extensions thereof, in the names of Landlord and Tenant, general liability insurance against any and all claims for personal injury or property damage occurring in or upon the Premises during the term of this Lease. Such insurance shall be maintained with limits of liability of not less than Five Hundred Thousand Dollars (\$500,000) for injuries to any number of persons in any one accident or occurrence; and, Five Hundred Thousand Dollars (\$500,000) for damage to property in any one accident or occurrence. Tenant shall furnish to Landlord at Landlord's written request reasonable evidence of Tenant's compliance with the provisions of this paragraph, such as certificates of insurance. Tenant further agrees that Tenant shall be solely responsible for procuring and maintaining casualty insurance on the improvements constructed by Tenant on the Premises.

Section 11.02. Waiver of Subrogation. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all right of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Premises, improvements to the Premises, or personal property within the Premises, by reason of fire or the elements, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees to the extent such loss is covered by a policy of insurance. Landlord and Tenant agree immediately to give their respective insurance companies written notice of terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers, in amounts and to the extent Tenant deems reasonable and necessary.

## ARTICLE XII

### Condemnation

Section 12.01. Termination of Lease. If Landlord's fee simple title to the Premises shall be taken for any public or any quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof (herein the "Taking"), then this Lease shall terminate automatically as of the date possession is given to the condemning authority. If there is a Taking of any material part of the Premises as to render the remainder thereof substantially unusable for the purposes for which the Premises were leased, then Tenant shall have the right to terminate this Lease on thirty (30) days' notice to the other given within ninety (90) days before the estimated date of possession being given to the condemning authority. In the event of a partial taking and the remainder of the Premises are usable, rent shall be reduced in proportion to the amount of square footage condemned.

Section 12.02. Compensation. All compensation awarded or paid upon a total or partial Taking of the Premises shall be distributed pro rata to Landlord for the value of the real estate and to Tenant for the Tenant Improvements.

Section 12.03. Taking for Temporary Use. If there is a Taking of the Premises for temporary use, this Lease shall continue in full force and effect, and Tenant shall continue to comply with Tenant's obligations under this Lease, except to the extent compliance shall be rendered impossible or impracticable by reason of the Taking.

## ARTICLE XIII

### Indemnity and Liability

Section 13.01. Indemnity.

- a. As used in Article XIII, "Claims" means any claims, suits, proceedings, actions, causes of action, mechanics or materialman's liens, responsibility, liability, demands, judgments, and executions.
- b. Tenant hereby indemnifies and agrees to save harmless Landlord from and against all Claims, which (i) arise from any work performed by Tenant on the Premises; (ii) arise from or are in connection with the possession, use, occupation, management, repair, maintenance or control of the Premises or any portion thereof; (iii) arise from or are in connection with any act or omission of Tenant or Tenant's Agents; (iv) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Tenant; or (v) result from injury to person or property or loss of life sustained in or about the

Premises except to the extent arising out of any negligence or willful misconduct of Landlord.

- c. Landlord hereby indemnifies and agrees to save Tenant harmless from and against all claims which (i) arise from or are in connection with any act or omission of Landlord; (ii) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Landlord; or (iii) result from injury to person or property or loss of life sustained in or about the Premises to the extent arising out of any negligence or willful misconduct of Landlord. Provided, however, that in any case where the claims are of a nature such that Landlord's liability would be limited by limitations or immunities under the Kansas Tort Claims Act, if the claims were brought directly against Landlord, Landlord's liability under this subsection c. shall be subject to the same limitations and immunities.
- d. Indemnitor shall defend any Claims against Indemnitee with respect to the foregoing at Indemnitor's sole cost and with counsel reasonably satisfactory to Indemnitee. Indemnitor shall pay, satisfy and discharge any judgments, orders and decrees which may be recovered against Indemnitee in connection with any Claims.
- e. This Section 13.01 shall expressly survive the termination or expiration of this Lease.

Section 13.02. Liability Insurance.

- a. Tenant shall provide and maintain a comprehensive policy of liability insurance with respect to the Premises as set forth in Section 11.01 hereof. Landlord and any designee of Landlord shall be named as additional insureds. The liability insurance policy shall protect Landlord, Tenant and any designee of Landlord against any liability which arises from any occurrence on or about the Premises or any appurtenance of the Premises, or which arises from any of the Claims described in Section 13.01 against which Tenant is required to indemnify Landlord.
- b. The policy shall be written by an insurance company reasonably satisfactory to Landlord with coverage limits reasonably satisfactory to Landlord.

Section 13.03. Inability to Perform.

- a. If Landlord fails to perform any of its obligations under this Lease as a result of Acts of God; strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act of war; fire or other casualty; delays caused by Tenant; and causes beyond the reasonable control of Landlord (a "Force Majeure"), Landlord shall not be liable for loss or damage for the failure, and Tenant shall not be released from any of its obligations under this Lease.

- b. If Landlord is delayed or prevented from performing any of its obligations as a result of a Force Majeure, the period of delay or prevention shall be added to the time herein provided for the performance of any such obligation.

## ARTICLE XIV

### Covenant of Quiet Enjoyment

Landlord covenants, represents and warrants that it has good and marketable fee simple title to the Premises free and clear of all liens, assessments, leases, taxes and other encumbrances except those title exceptions specifically approved by Tenants in writing ("Approved Title Exceptions"). Landlord covenants that Landlord has the authority to lease the Premises to Tenant, and if Tenant pays the rent and all other charges provided for in this Lease, performs all of its obligations provided for under this Lease, and observes all of the other provisions of this Lease, Tenant shall peaceably and quietly enjoy the Premises in accordance with the terms of this Lease without any interruption or disturbance from Landlord.

## ARTICLE XV

### Default

Section 15.01. Events of Default. Each of the following events shall be a default hereunder by Tenant and a breach of this Lease:

- a. If Tenant shall file a petition in bankruptcy, or insolvency, or for reorganization, or arrangement under the bankruptcy laws of the United States, or any insolvency act of any state, or shall voluntarily take advantage of any such law or act by answer or otherwise, or shall be dissolved, or shall make an assignment for the benefit of creditors;
- b. If involuntary proceedings under any such bankruptcy law, or insolvency act, or for the dissolution of a corporation shall be instituted against Tenant, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant, and such proceedings shall not be dismissed, or such receivership or trusteeship vacated within one hundred (100) days after such institution or appointment;
- c. If Tenant shall fail to pay Landlord any rent or additional rent within thirty (30) days after receipt of written notice from Landlord that the same are due and payable; or
- d. If Tenant shall breach or fail to perform any of the agreements, terms, covenants, or conditions hereof on Tenant's part to be performed other than the payment of

rent or additional rent, and such nonperformance shall continue for a period of thirty (30) days after receipt of written notice thereof by Landlord to Tenant (provided, however, that Tenant shall not be in default hereunder if Tenant shall, within such thirty (30) day cure period, commence and at all times thereafter diligently pursue all practicable efforts to cure the default).

If any such default shall occur and shall not be cured within the applicable cure period, if any, Landlord shall have the right to cancel and terminate this Lease, as well as all of the right, title, and interest of Tenant hereunder, by giving to Tenant written notice of such cancellation and termination, and upon such notice, this Lease and the term hereof, as well as all of the right, title, and interest of Tenant hereunder, shall expire in the same manner and with the same force and effect, as if the expiration of the time fixed in such notice of cancellation and termination were the end of the Term. Upon the Expiration Date the Lease shall be deemed null, void and of no force and effect, and both parties shall be relieved of any further obligation to the other under the terms of the Lease. There will not be a default until any mortgagee has received written notice of a failure of Tenant to perform and the mortgagee's cure period has expired.

Section 15.02. Landlord's Right to Cure. Upon any uncured default, Landlord at its option may, but shall not be obligated to, make any payment required of Tenant herein, or comply with any agreement, term, covenant, or condition required hereby to be performed by Tenant and the amount so paid, together with interest thereon at the rate of ten percent (10%) per annum from the date of such payment by Landlord shall be deemed to be additional rent hereunder payable by Tenant and collectible as such by Landlord with the next succeeding monthly installment of rent. Landlord shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain therein until the same shall have been corrected or remedied, but neither any such expenditure, nor any such performance, by Landlord shall be deemed to waive or release Tenant's default or the right of Landlord to take such action as may be otherwise permissible hereunder in the case of such default. There will not be a default until any mortgagee has received written notice of a failure of Tenant to perform and the mortgagee's cure period has expired.

15.03. Landlord Default; Tenant Remedies. If Landlord fails to pay any amount due under the Lease, or shall breach or fail to perform any other agreement, term, covenant or condition of the Lease, and such failure shall continue for a period of thirty (30) days after Landlord's receipt of written notice from Tenant of such failure, Landlord shall be in default and in breach of this Lease. In the event of a Landlord default, Tenant shall have the right, but not the obligation, to cancel and terminate this Lease immediately by providing Landlord with written notice of such termination, and upon such Expiration Date, the Lease shall be deemed null, void and of no force and effect, and that both parties shall be relieved of performing any further obligation under the terms of the Lease, but shall not be relieved of liability for any additional remedy available to Tenant. In the event of a Landlord default, Tenant shall also have the right, but not the obligation, to pursue any other remedy available to Tenant at law or in equity, including but not limited to specific performance, offset, deduction and abatement. Tenant's remedies under this Section 15.03 shall be cumulative and not mutually exclusive.

## ARTICLE XVI

### Interpretation, Notices, Miscellaneous

#### Section 16.01. Interpretation.

- a. If any provision of this Lease or the application of any provision of this Lease to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.
- b. The captions and headings used throughout this Lease are for convenience of reference only and shall not affect the interpretation of this Lease.
- c. This Lease may be executed in several counterparts; but the counterparts shall constitute but one and the same instrument.
- d. This agreement shall be interpreted in accordance with the internal laws of the State of Kansas without giving effect to conflict of laws principles.
- e. This Lease shall not be construed more or less favorably with respect to either party as a consequence of the Lease or various provisions hereof having been drafted by one of the parties hereto.
- f. Capitalized terms not defined herein shall have the same meaning as contained in the Development Agreement.
- g. The recitals set forth above and the Exhibits attached to this Lease are, by this reference, incorporated into and deemed a part of this Lease.

Section 16.02. No Oral Changes. This Lease contains the entire agreement of the parties with respect to the subject matter hereof, and may not be changed or terminated orally. The parties agree that the Original Ground Lease is amended and restated in its entirety, and that this Lease and Ground Lease 1-A supersede the Original Ground Lease in all respects. Notwithstanding the foregoing, this Lease and Ground Lease 1-A are separate in all respects, and a termination, amendment, or default with respect to one will in no way affect the other.

Section 16.03. Communications. No notice, request, consent, approval, waiver or other communication under this Lease shall be effective unless the same is in writing and is mailed by registered or certified mail, postage prepaid, addressed as follows:

- a. If intended for Landlord, a written communication shall be effective if mailed to the address designated as Landlord's Notice Address in Article I or to such other address as Landlord designates by giving notice to Tenant; and

- b. If intended for Tenant, a written communication shall be effective if mailed to the address designated as Tenant's Notice Address in Article I or to such other address as Tenant shall designate by giving notice thereof to Landlord.

Section 16.04. Successors and Assigns. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs and assigns.

Section 16.05. Time of the Essence. The time of the performance of all of the covenants, conditions and agreements of this Lease is of the essence of this Lease.

Section 16.06. Assignment; Sublease. Tenant may freely assign or sublease all or any portion of the Premises without Landlord's consent.

Section 16.07. Authority. The undersigned both represent and warrant they have authority to bind the respective parties to all of the terms of the Lease.

Section 16.08. Other Definitions. For purposes of this Lease, the following definitions shall be applicable to the various provisions of this Lease:

**"Gross Revenues"** means all revenues, business interruption insurance proceeds, receipts and income of any kind derived directly or indirectly by the Tenant from or in connection with the Tenant Improvements (including rentals or other payments from tenants, lessees, licensees or concessionaires but not including their gross receipts), whether on a cash basis or credit, paid or collected, determined in accordance with sound accounting principles, excluding, however: (i) funds furnished by the Tenant, (ii) federal, state and municipal excise, sales and use taxes collected directly from patrons and guests or as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments, (iii) gratuities, (iv) proceeds of insurance and condemnation (except as stated above or expressly provided elsewhere), and (v) sale or disposition proceeds of the Tenant or the Tenant Improvements.

**"Total Expenses"** means all expenses reasonably incurred by the Tenant or Manager in the operation and maintenance of the Tenant Improvements as determined in accordance with sound accounting principles, including but not limited to.

- salaries and employee expense and taxes (including reasonable salaries, wages, bonuses and other compensation of all employees of the Tenant and their social benefits which shall include, but not be limited to, life, medical and disability insurance and retirement benefits);
- expenditures for ordinary and non-structural repairs and maintenance necessary to maintain the Tenant Improvements in good operating condition;
- expenditures for operational supplies, utilities, insurance, governmental fees and assessments;
- the cost of inventories and fixed asset supplies, and license fees;

- franchise fees and other fees, expenses, and charges under a franchise agreement, if any;
- expenditures for advertising and marketing;
- federal, state and municipal excise, sales and use taxes, except those collected directly from guests and patrons or as part of the sales price of any goods, services or displays, such as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments;
- amounts paid into any capital, furniture, fixture, equipment or other reserve, excluding, however, insurance proceeds and condemnation awards;
- fees paid to the Manager;
- ad valorem taxes and personal property taxes and special assessments to be paid by the Tenant;
- the cost of insurance to be provided by the Tenant;
- amounts paid for operating and capital leases for furniture and equipment;
- payments of debt service to the Leasehold Mortgage or other creditors and other loans to the Tenant;
- Tenant Development Cost Return, defined as, on an annual basis, twenty percent (20%) of the total Construction Costs paid by Tenant, Developer, or permitted assignees and sublessees.

excluding, however: (i) capital expenditures by the Tenant, (ii) amortization expense, (iii) depreciation expense.

No part of Manager's central office overhead or general or administrative expense (as compared to that of the Tenant Improvements) shall be deemed to be a part of Total Expenses. Out-of-pocket expenses of Manager incurred for the account of or in connection with the Tenant Improvements operations, including reasonable travel expenses of employees, officers and other representatives and consultants of Manager and its affiliates, shall be deemed to be a part of Total Expenses and such persons shall be afforded reasonable accommodations, food, beverages, laundry, valet and other such services.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amended and Restated WaterWalk Ground Lease No. 1-B instrument the date first above written.

CITY OF WICHITA, KANSAS

WATERWALK LLC

By \_\_\_\_\_  
Jeff Longwell, Mayor

By \_\_\_\_\_  
Jack P. DeBoer, President

“Landlord”

“Tenant”

Attest:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved As To Form:

\_\_\_\_\_  
Jennifer Magana, City Attorney and Director of Law

Exhibit A

*"Original Ground Lease Land"*

A portion of Lots 1 and 2, Block 1, WaterWalk Phase 1 Addition, an Addition to Wichita, Sedgwick County, Kansas, formerly described as follows:

A tract of platted and unplatted land lying in the Southeast Quarter, Section 20, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, being a part of Lot 1, EASTBANK FIRST ADDITION, to the City of Wichita, a part of Lots 80 and 81, and the AT&SF Railroad Right of Way, RIVER ADDITION, to the City of Wichita, a portion of the Street Rights of Way for Wichita Street and Dewey Street, a portion of the Right of Way for Kellogg Highway and a portion of that part of the Southeast Quarter lying between EASTBANK FIRST ADDITION and the Left High Bank of the Arkansas River. Said tract of land being particularly described as follows:

COMMENCING at the Southwest corner of Lot 1, said EASTBANK FIRST ADDITION, said point being on the existing North Right of Way line of Kellogg Highway;

THENCE North 89°56'29" West, along said North Right of Way line, a distance of 10.82 feet to the POINT OF BEGINNING;

THENCE continuing North 89°56'29" West, along said line, a distance of 59.80 feet;

THENCE North 00°00'13" West, a distance of 414.67 feet;

THENCE North 89°59'47" East, a distance of 219.62 feet to a point on the Proposed West Right of Way line of Wichita Street;

THENCE along said Proposed West Right of Way line for the following six (6) courses:

1. South 00°00'13" East, a distance of 10.71 feet;
2. along a curve to the left, having a radius of 255.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 189.77 feet, and arc length of 194.45 feet;
3. on a reverse curve to the right, having a radius of 70.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 52.09 feet, and arc length of 53.38 feet;
4. South 00°00'13" East, a distance of 88.39 feet;
5. along a curve to the right, having a radius of 220.00 feet, a central angle of 22°03'01", a chord bearing of South 11°01'18" West, a chord distance of 84.15 feet, and arc length of 84.67 feet;
6. on a reverse curve to the left, having a radius of 280.00 feet, a central angle of 07°48'46", a chord bearing of South 18°08'25" West, a chord distance of 38.15 feet, and arc length of 38.18 feet to a point on the Proposed North Right of Way line of Kellogg Highway;

THENCE along said Proposed North Right of Way line for the following five (5) courses:

1. South 80°17'29" West, a distance of 12.49 feet;
2. South 80°41'34" West, a distance of 63.05 feet;
3. South 83°18'29" West, a distance of 68.18 feet;
4. South 85°24'29" West, a distance of 76.21 feet;
5. South 85°37'26" West, a distance of 3.66 feet;

THENCE North 00°00'13" West, a distance of 54.33 feet to the POINT OF BEGINNING.

Said tract of land containing 124,282 square feet or 2.8531 acres, more or less.

**Exhibit B**

*"Premises"*

A portion of Lot 1 and/or Lot 2, Block 1, WaterWalk Phase 1 Addition, an Addition to Wichita, Sedgwick County, Kansas, formerly described as follows:

A tract of platted and unplatted land lying in the Southeast Quarter, Section 20, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas; being a part of Lot 1, EASTBANK FIRST ADDITION, to the City of Wichita, a part of Lots 80 and 81, and the AT&SF Railroad Right of Way, RIVER ADDITION, to the City of Wichita, a portion of the Street Rights of Way for Wichita Street and Dewey Street, a portion of the Right of Way for Kellogg Highway and a portion of that part of the Southeast Quarter lying between EASTBANK FIRST ADDITION and the Left High Bank of the Arkansas River. Said tract of land being particularly described as follows:

COMMENCING at the Southwest corner of Lot 1, said EASTBANK FIRST ADDITION, said point being on the existing North Right of Way line of Kellogg Highway;  
THENCE North 89°56'29" West, along said North Right of Way line, a distance of 10.82 feet to the POINT OF BEGINNING;

THENCE continuing North 89°56'29" West, along said line, a distance of 59.80 feet;

THENCE North 00°00'13" West, a distance of 414.67 feet;

THENCE North 89°59'47" East, a distance of 219.82 feet to a point on the Proposed West Right of Way line of Wichita Street;

THENCE along said Proposed West Right of Way line for the following six (6) courses:

1. South 00°00'13" East, a distance of 10.71 feet;
2. along a curve to the left, having a radius of 255.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 189.77 feet, and arc length of 194.45 feet;
3. on a reverse curve to the right, having a radius of 70.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 52.09 feet, and arc length of 53.38 feet;
4. South 00°00'13" East, a distance of 88.39 feet;
5. along a curve to the right, having a radius of 220.00 feet, a central angle of 22°03'01", a chord bearing of South 11°01'18" West, a chord distance of 84.15 feet, and arc length of 84.67 feet;
6. on a reverse curve to the left, having a radius of 280.00 feet, a central angle of 07°48'46", a chord bearing of South 18°08'25" West, a chord distance of 38.15 feet, and arc length of 38.18 feet to a point on the Proposed North Right of Way line of Kellogg Highway;

THENCE along said Proposed North Right of Way line for the following five (5) courses:

1. South 80°17'29" West, a distance of 12.49 feet;
2. South 80°41'34" West, a distance of 63.05 feet;
3. South 83°18'29" West, a distance of 68.16 feet;
4. South 85°24'29" West, a distance of 76.21 feet;
5. South 85°37'26" West, a distance of 3.66 feet;

THENCE North 00°00'13" West, a distance of 54.33 feet to the POINT OF BEGINNING.

Said tract of land containing 124,282 square feet or 2.8531 acres, more or less.

LESS AND EXCEPT:

A tract of platted and unplatted land lying in the Southeast Quarter, Section 20, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, being a part of Lot 1, EASTBANK FIRST ADDITION, to the City of Wichita, a part of Lots 80 and 81, and the AT&SF Railroad Right of Way, RIVER ADDITION, to the City of Wichita, a portion of the Street Rights of Way for Wichita Street and Dawey Street, a portion of the Right of Way for Kellogg Highway and a portion of that part of the Southeast Quarter lying between EASTBANK FIRST ADDITION and the Left High Bank of the Arkansas River. Said tract of land being particularly described as follows:

COMMENCING at the Southwest corner of Lot 1, said EASTBANK FIRST ADDITION, said point being on the existing North Right of Way line of Kellogg Highway;

THENCE North 89°56'29" West, along said North Right of Way line, a distance of 10.82 feet to the POINT OF BEGINNING;

THENCE continuing North 89°58'29" West, along said line, a distance of 59.80 feet;

THENCE North 00°00'13" West, a distance of 342.56 feet;

THENCE North 89°59'47" East, a distance of 227.12 feet to a point on the Proposed West Right of Way line of Wichita Street;

THENCE along said Proposed West Right of Way line for the following five (5) courses:

1. on a non tangent curve to the left, having a radius of 255.00 feet, a central angle of 29°45'51", a chord bearing of South 28°48'44" East, a chord distance of 130.98 feet, and arc length of 132.47 feet;
2. on a reverse curve to the right, having a radius of 70.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 52.09 feet, and arc length of 53.38 feet;
3. South 00°00'13" East, a distance of 88.39 feet;
4. along a curve to the right, having a radius of 220.00 feet, a central angle of 22°03'01", a chord bearing of South 11°01'18" West, a chord distance of 84.15 feet, and arc length of 84.67 feet;
5. on a reverse curve to the left, having a radius of 280.00 feet, a central angle of 07°48'46", a chord bearing of South 18°08'25" West, a chord distance of 38.15 feet, and arc length of 38.18 feet to a point on the Proposed North Right of Way line of Kellogg Highway;

THENCE along said Proposed North Right of Way line for the following five (5) courses:

1. South 80°17'29" West, a distance of 12.49 feet;
2. South 80°41'34" West, a distance of 63.05 feet;
3. South 83°18'29" West, a distance of 68.16 feet;
4. South 85°24'29" West, a distance of 76.21 feet;
5. South 85°37'26" West, a distance of 3.66 feet;

THENCE North 00°00'13" West, a distance of 54.33 feet to the POINT OF BEGINNING.

Said tract of land containing 108,300 square feet or 2.4862 acres, more or less.

**Exhibit C**

***"South Development Parcel"***

A portion of Lot 1 and/or Lot 2, Block 1, WaterWalk Phase 1 Addition, an Addition to Wichita, Sedgwick County, Kansas, formerly described as follows:

A tract of platted and unplatted land lying in the Southeast Quarter, Section 20, Township 27 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, being a part of Lot 1, EASTBANK FIRST ADDITION, to the City of Wichita, a part of Lots 80 and 81, and the AT&SF Railroad Right of Way, RIVER ADDITION, to the City of Wichita, a portion of the Street Rights of Way for Wichita Street and Dewey Street, a portion of the Right of Way for Kellogg Highway and a portion of that part of the Southeast Quarter lying between EASTBANK FIRST ADDITION and the Left High Bank of the Arkansas River. Said tract of land being particularly described as follows:

COMMENCING at the Southwest corner of Lot 1, said EASTBANK FIRST ADDITION, said point being on the existing North Right of Way line of Kellogg Highway;

THENCE North 89°56'29" West, along said North Right of Way line, a distance of 10.82 feet to the POINT OF BEGINNING;

THENCE continuing North 89°58'29" West, along said line, a distance of 59.80 feet;

THENCE North 00°00'13" West, a distance of 342.58 feet;

THENCE North 89°59'47" East, a distance of 227.12 feet to a point on the Proposed West Right of Way line of Wichita Street;

THENCE along said Proposed West Right of Way line for the following five (5) courses:

1. on a non tangent curve to the left, having a radius of 255.00 feet, a central angle of 29°45'51", a chord bearing of South 28°48'44" East, a chord distance of 130.98 feet, and arc length of 132.47 feet;
2. on a reverse curve to the right, having a radius of 70.00 feet, a central angle of 43°41'27", a chord bearing of South 21°50'57" East, a chord distance of 52.09 feet, and arc length of 53.38 feet;
3. South 00°00'13" East, a distance of 88.39 feet;
4. along a curve to the right, having a radius of 220.00 feet, a central angle of 22°03'01", a chord bearing of South 11°01'18" West, a chord distance of 84.15 feet, and arc length of 84.67 feet;
5. on a reverse curve to the left, having a radius of 280.00 feet, a central angle of 07°48'46", a chord bearing of South 18°08'25" West, a chord distance of 38.15 feet, and arc length of 38.18 feet to a point on the Proposed North Right of Way line of Kellogg Highway;

THENCE along said Proposed North Right of Way line for the following five (5) courses:

1. South 80°17'29" West, a distance of 12.49 feet;
2. South 80°41'34" West, a distance of 83.05 feet;
3. South 83°18'29" West, a distance of 58.16 feet;
4. South 85°24'29" West, a distance of 76.21 feet;
5. - South 85°37'26" West, a distance of 3.66 feet;

THENCE North 00°00'13" West, a distance of 54.33 feet to the POINT OF BEGINNING.

Said tract of land containing 108,300 square feet or 2.4882 acres, more or less.